

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 814 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to5 : No

STATE OF GUJARAT

Versus

KIRITSINH ALIAS CHHATRASINH RAMSINH

Appearance:

Ms. Ami Yagnik, APP, for the appellant.

MR JN JADEJA for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 21/04/99

ORAL JUDGMENT (Per: Kadri, J.)

1. This appeal is directed under Section 378 of the Code of Criminal Procedure, 1973, challenging the judgment and order dated June 5, 1992, passed by the learned Additional Sessions Judge, Sabarkantha, at Himatangar, in Sessions Case No.13 of 1992, whereby, the

respondents-original accused have been acquitted of the offences punishable under Sections 328 and 114 of the Indian Penal Code.

2. The prosecution case in short is as under:

Complainant, Induba Kirtisinh, is the wife of respondent No.1 and their marriage was solemnized prior to 20 years of the incident which took place on January 13, 1990. Out of the wedlock, the complainant had given birth to three sons and one daughter. It is the case of the complainant that respondent No.1 used to beat the complainant and, therefore, she had initiated proceedings under Section 125 of the Code of Criminal Procedure for maintenance. In that proceeding, a compromise was arrived at and the complainant had gone to reside with respondent No.1. After the compromise had arrived at between the complainant and respondent No.1, their relation had become cordial and the complainant had given birth to one daughter, but, after the birth of the daughter, respondent No.1 started beating the complainant. As per the case of the complainant, respondent No.1 had developed illicit relationship with respondent No.2. On January 13, 1990, respondents Nos. 1 and 2 had closed the door of the home and had tried to administer poison to the complainant. The complainant resisted and did not allow the respondents to administer poison. Due to the resistance offered by the complainant, the respondents had gone out of the room and, thereafter, the complainant had gone to her brother's place at village Rampura. The complainant had narrated the whole incident to her brother who took her in an auto-rickshaw to Swami Ramanujam Saraswati Hospital, Vijapur. The complainant was kept as indoor patient in the hospital for three days. The complainant lodged complaint against the respondents and a case was registered against the respondents for the offences punishable under Sections 328 and 114 of the Indian Penal Code. The Investigating Agency attached the clothes put on by the complainant under a panchanama and sent incriminating articles for analysis to the Forensic Science Laboratory. PSI, Champaksinh Darsinh Parmar, recorded statements of witnesses and arrested the respondents on February 20, 1990. On receipt of report from the Forensic Science Laboratory and after completing the investigation, charge-sheet was filed against the respondents in the court of the learned Judicial Magistrate, First Class, at Himatnagar, for the offences punishable under Sections 328 and 114 of the Indian Penal Code. As offence under Section 328 of the Indian Penal Code is exclusively triable by the Court of Sessions, the said case was committed to the Court of Sessions,

Sabarkantha, at Himatnagar, which came to be numbered as Sessions Case No.13 of 1990.

3. Charge Exh.3 came to be framed against the respondents for the offences under Sections 328 and 114 of the Indian Penal Code. The charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution led oral as well documentary evidence against the respondents to substantiate the charge. To prove the guilt of the respondents, the prosecution examined (1) P.W. 1, Dr. Mukudchandra Babulal Naik, Exh.8, (2) P.W. 2, complainant, Induba Kirtisinh, Exh.12, (3) P.W. 3, Bhikhusinh Dalpatsinh, Exh.13, (4). P.W.4, Dipsinh Lalsinh, Exh.16, (5) P.W.5, Amirkhan Mandan Gadhvi, Exh.18, and (6) P.W.6, Champaksinh Darsinh Parmar, Exh.19 and produced documentary evidence such as complaint, panchanama of seizure of clothes of the complainant, report of the Forensic Science Laboratory, medical case papers, etc. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In the further statement, the respondent No.1 denied the case of the prosecution, and stated that false case was filed against him just to extract money by the complainant. Respondent No.2 also stated that false case was cooked up against her.

4. The learned Additional Sessions Judge, after appreciating oral as well as documentary evidence and arguments advanced by the learned counsel for both the parties, observed that in Entry Exh.11 the names of the respondents were not mentioned as persons who had tried to administer poison to the complainant. The learned Additional Sessions Judge held that, even in the case papers of the hospital, the word 'husband' who had alleged to have tried to administer poison on the complainant was written within brackets subsequently. The learned Additional Sessions Judge further held that even in Entry bearing No.25/90, the names of the respondents did not appear. The learned Additional Sessions Judge also held that even though entry was made at Vijapur Police Station on January 13, 1990 at 7 p.m. no investigation was carried out till January 16, 1990 when the complainant lodged complaint before the Head Constable Amirkhan Gadhvi. The learned Additional Sessions Judge observed that in examination in chief, the complainant had deposed that she did not know respondent No.2 who was alleged to be concubine of respondent No.1 and, therefore, it was concluded that the case filed

against respondent No.2 was totally false. The learned Additional Sessions concluded that the version of the complainant about administering poison to her by the respondents was highly improbable and untrustworthy. It was further concluded that if the respondents had tried to administer poison forcibly to the complainant, then because of the resistance by the complainant there would have been some injuries on her body. It was also concluded that even though the complainant was admitted in the hospital on January 13, 1990 at Vijapur, she had not lodged the complaint immediately, but she had filed complaint against the respondents on January 16, 1990 when Head Constable of Mahudi Out-post visited the hospital. On the basis of the aboveresferred to conclusions, the learned Additional Sessions Judge acquitted both the respondents of the offences punishable under Sections 328 and 114 of the Indian Penal Code, which has given rise to the present appeal.

5. Ms. Ami Yagnik, learned Additional Public Prosecutor, has taken us through the entire evidence of the present case. The learned APP submitted that the learned Additional Sessions Judge ought to have placed reliance on the oral testimony of the complainant, which was supported by the medical evidence and the oral deposition of the brother of the complainant, namely, Bhikhusinh Dalpatsinh Exh.13 for convicting the respondents. It is claimed that respondent No.1 was having illicit relation with respondent No.2, and on the instigation of respondent No.2, an attempt was made to administer poison to the complainant to bring to an end the life of the complainant. It is stressed that the evidence of the complainant was trustworthy and reliable and the evidence showed that the complainant was treated with cruelty and to bring to an end her life, the respondents had tried to administer poison on her. Lastly, it was pleaded by the learned APP that there is sufficient evidence on record to prove guilt of the respondents and, therefore, the appeal should be allowed and the order of acquittal be set aside.

6. We have anxiously considered the submissions of the learned Additional Public Prosecutor, but, we are afraid, there is no substance in any of the contentions urged on behalf of the appellant. The case against respondent No.2 is totally got up and false as the complainant herself admitted in her examination in chief that she did not know respondent No.2. Therefore, we are of the opinion that a false case has been cooked up against respondent No.2 that she was having illicit

relations with respondent No.1 and she was concubine of respondent No.1. When Entry No.25/90 was filed by the complainant at Vijapur Police Stations, names of the respondents were not mentioned. This shows that the complainant, after due deliberation with her brother, had lodged false complaint on January 16, 1990 after three days of the incident at the Vijapur Police Station. No poison was found to have been administered to the complainant by the respondents. The report of the Forensic Science Laboratory only showed that some substance was found on the clothes put on by the complainant. The complainant came out with a case that she was unconscious for three days at Vijapur Hospital, whereas her version is falsified by the version of Dr.Mukudchandra Naik at Exh.8. The medical papers of the Vijapur Hospital do not show that there was any sign of administering poison to the complainant. The version of the complainant, in our opinion, is highly improbable and the learned Additional Sessions Judge rightly rejected the prosecution case. Under the circumstances, it cannot be said that any error is committed by the learned Additional Sessions Judge in acquitting the respondents of the offences with which they were charged.

7. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Additional Sessions Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the respondents. Suffice it to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Special judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

8. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles be destroyed in the terms of the impugned judgment.

(swamy)

